

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**  
**NASHVILLE, TENNESSEE REGULATORY AUTH.**

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IN RE:

OFFICE OF THE  
EXECUTIVE SECRETARY

APPLICATION OF MEMPHIS NETWORKX, LLC  
FOR A CERTIFICATE OF PUBLIC CONVENIENCE  
AND NECESSITY TO PROVIDE INTRASTATE  
TELECOMMUNICATION SERVICES AND JOINT  
PETITION OF MEMPHIS LIGHT GAS & WATER  
DIVISION, A DIVISION OF THE CITY OF  
MEMPHIS, TENNESSEE ("MLGW") AND A&L  
NETWORKS-TENNESSEE, LLC ("A&L") FOR  
APPROVAL OF AGREEMENT BETWEEN MLGW  
AND A&L REGARDING JOINT OWNERSHIP OF  
MEMPHIS NETWORKX, LLC.

Docket No. 99-00909

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**OBJECTION TO DOCUMENT PRODUCTION**

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Applicant Memphis Networkx, LLC ("Applicant") and Joint Petitioners Memphis Light, Gas & Water ("MLGW") and Memphis Broadband, LLC (collectively "Joint Petitioners") object to the March 19 request for production of documents prepared by Cambridge Strategic Management Group and would summarize the grounds for the objection as follows:

1. The request is untimely under the pre-hearing order inasmuch as a deadline was set in the pre-hearing order for discovery including written requests for production of documents. (Pre-hearing order of February 9.) That deadline has passed. Furthermore, documents listed in a subpoena duces tecum attached to the deposition notice were produced. This request was not contained in the subpoena list, nor the written requests. Therefore, the request is untimely.

2. The request is excessive inasmuch as the maximum allowable written production requests have already been made under TRA Rule 1220-1-2-11(5)(a). No motion to serve additional requests was filed and no showing of good cause was made under that TRA rule.

3. The Cambridge documents are not a “business plan” as described in the Intervenor’s written request filed March 20 and therefore this request was not contained in Requests 5 or 21 cited by the Intervenor. The documents requested are not a “business plan” (Request 5) nor are they documents showing “total payment” to consultants (Request 21). This is a new request beyond the deadline and beyond the maximum limit.

4. This request is beyond the scope of this proceeding (see February 9, 2001, Pre-Hearing Order) and therefore not calculated to lead to the production of admissible evidence (T.R.C.P. Rule 26.02 (1)). The TRA is not called upon in its review of certificate applications to go beyond high level plans (e.g., wholesale service) or examine contemporaneous strategic decision-making documents of applicants and it should not permit the mandatory production to Intervenor of such information. It is beyond this proceeding.

5. This request is beyond the scope of the issues identified by the TRA in this proceeding and therefore not calculated to lead to the production of admissible evidence. (see TRA Order of June 29, 2000).

6. This material is extremely competitively-sensitive information and its production even under the protective order would unnecessarily place at risk a private business enterprise because release of the information, whether inadvertent, negligent or otherwise, could cause substantial financial damage to investors and a devastating blow to the competitive marketplace. The risk is too great and it outweighs any benefit of production.

7. Production of such commercially and competitively-sensitive documents would be anti-competitive and contrary to the Tennessee legislatively-established policy to promote competition.

8. Requiring private company applicants to make such productions as a requirement to enter the market would be a barrier to entry not consistent with federal law.

9. The requesting party has not carried the burden of showing specific and compelling reasons why production should be made of documents so sensitive.

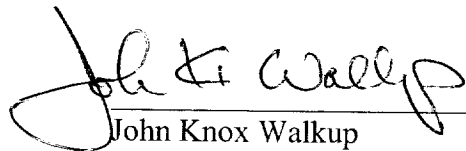
10. Such competitively-sensitive production has not been required of other applicants for certificates, nor should it be required of this applicant.

11. The documents requested are interim documents, subject to revision and entitled to protection as a part of the evolving decision process of a private company.

12. Applicants and Joint Petitioners have been extremely forthcoming and have produced thousands and thousands of pages. It is not unreasonable to conclude that there is something that a private Tennessee company receives from its consultants that will remain private, confidential and not disclosed at the mere request of its competitors.

Therefore, Applicant and Joint Petitioners ask that the objection to production be sustained and the request for production be denied.

Respectfully submitted,



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Memphis Broadband, LLC

And

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WALLER, LANSDEN, DORCH & DAVIS  
Counsel for  
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Memphis Light Gas & Water

**CERTIFICATE OF SERVICE**

I, John Knox Walkup, hereby certify that on this 21<sup>st</sup> day of March, 2001,  
a true and correct copy of the foregoing was delivered by hand delivery, facsimile or U.S. Mail  
postage prepaid to the Counsel of Record listed below.

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